IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 8636 of 2004

Between:

Andhra Bank, Yemiganoor Branch, Kurnool District rep by Branch Manager Malleshwar S/o Krishna Murthy R/o Yemiganoor, Kurnool district

... PETITIONER

AND

1 Employees Provident Fund, Barkathpura, Hyderabad rep by Commissioner
2 Recovery Officer, Employees Provident Fund Organization Sub-Regional

Office,1/30 RS Road, Kadapa
3 M/s. Yemiganoor Spinning Mills Ltd., Reg. Office at 1-704, Yemiganoor, Kurnool District rep by Managing Director.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus: a) Declare the action of the 1st and 2nd respondents in selling away the properties which are mortgaged in favour of the petitioner bank by way of public auction towards recovery of employees provident Fund contributions of Yemiganoor Spinning Mills, as arbitrary, illegal and unsustainable; b) Direct the respondents No.1 and 2 not to sell all the properties of the Yemiganoor spinning Mills which are mortgaged in favour of the petitioner bank towards employees Provident Fund contributions; Further direct the respondents No. 1 and 2 not to confirm the sale of properties which were conducted on 18-03-2004 in favour of the purchasers as the said properties are mortgaged in favour of the petitioner bank

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents No. 1 & 2: MR.R.N.REDDY SC FOR PROVIDENT FUND

The Court at the stage of admission made the following order:

ORDER:

Heard the learned counsel for the petitioner.

2. Second Respondent-Recovery Officer issued proclamation of sale on 24.12.2003 and conducted auction of the properties of third respondent on 18.03.2004 for due recovery of the provident fund contribution payable by the third respondent.

3. Petitioner-Bank being a secured creditor for the debts in respect of the third respondent filed the present writ petition questioning the sale effected by the second respondent and not to confirm the sale of properties of the third respondent. It is also stated that the petitioner-bank filed O.A.No.564 of 1999 before the Debts Recovery Tribunal for recovery of the dues from the Yemiganoor Spinning Mills, which was re-numbered as O.A.No.2139 of 1999 in which they have obtained order in I.A.No.826 of 2000 not to sell the machinery and equipment which are hypothecated in favour of the petitioner-bank.

4. In the light of the sale notice issued, petitioner-bank filed another I.A.No.66 of 2004 before the Debts Recovery Tribunal, which stayed the proposed sale scheduled to be held on 27.01.2004 and the said I.A. was dismissed as infructous since no sale took place on the said date. In view of the same, a subsequent sale notice issued and action conducted cannot be confirmed.

5. If the petitioner is aggrieved by the proclamation of sale or auction conducted, the appropriate remedy available to the petitioner is to move the Civil Court under Sub Rule 6 of Rule 11 of the Schedule II of the Income Tax Act, which is made applicable for such sales by the Recovery Officer.

6. It is represented by the learned counsel for the respondents that the sale has already been confirmed. In view of the same, it is always open for the petitioner to avail the remedies available under the above rules.

The writ petition is accordingly disposed of. No costs.

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A. GOPAL REDDY, J

October 28, 2004

Dsk

To

1 The Commissioner Employees Provident Fund, Barkathpura, Hyderabad.
2 Recovery Officer, Employees Provident Fund Organization Sub-Regional

Office,1/30 RS Road, Kadapa.

3 Two CD Copies.